IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

D.B.A.NO. 93 OF 2006

PETITIONER:

THE KERALA STATE CO-OPERATIVE CONSUMER FEDERATION LTD., GANDHI NAGAR, ERNAKULAM.

BY ADV. SRI. M. SASINDRAN.

RESPONDENT

THE TRAVANCORE DEVASWOM BOARD, REP. BY THE SECRETARY, THIRUVANANTHAPURAM.

BY ADV. SRI. ANCHAL C. VIJAYAN.

THIS D.B.A HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT, ON 01/12/2006, PASSED THE FOLLOWING:

V.K. Bali, C.J. & S. Siri Jagan, J.

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W. A. No. 2064 of 2006

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Dated this, the 1st December, 2006.

J U D G M E N T

Siri Jagan, J.

The only question arising for consideration in this writ appeal before us is as to whether a resolution adopting a no-confidence motion against the President of a Co-operative Society is capable of being rescinded by the Registrar of Co-operative Societies under Rule 176 of the Co-operative Societies Rules or whether the same could only be canvassed in an election dispute under Section 69 of the Kerala Co-operative Societies Act (for short 'the Act').

2. The facts of the case fall in a very narrow compass. The 1st respondent in this writ appeal was elected as the President of the Neyyattinkara Government Servants Co-operative Society Ltd. No. (T) 280 on 1-6-2003. On 24-8-2006, a meeting of the managing committee passed a no-confidence motion moved by seven members of the Society against the 1st respondent as evidenced by Ext. P1. Alleging that this resolution was passed in violation of the procedure prescribed by Rule 43A of the Rules, the 1st respondent filed Ext. P3 complaint before the Joint Registrar of Co-operative Societies and filed W.P(C) No. 27173/2006 seeking a direction to the Joint Registrar to dispose of the same expeditiously. Simultaneously, he also challenged Ext. P2 resolution of the Board dated 24-8-2006, by which the appellant was elected as President in the place of the petitioner. By the impugned judgment, the learned Single Judge directed the Joint Registrar to take a decision on the complaint within 30 days of receipt of the copy of the judgment. This judgment is under challenge in this writ appeal on the ground that the powers of the Registrar under Rule 176 cannot be invoked for the purpose, and the remedy available to the 1st respondent is to file an election petition as

a dispute under Section 69(1) of the Act, since sub section (2)(c) of Section 69 specifically clarifies that any dispute arising in connection with the election of the Board of Management or any officer of the Society shall also be deemed to be a dispute for the purpose of Section (1).

3. We have heard both sides in detail.

4. At the outset, we must note that there are two proceedings under challenge in the writ petition namely, Exts. P1 and P2. Ext. P1 is the resolution stated to have been passed by the Managing Committee in its meeting held on 24-8-2006, by which the Managing Committee adopted a resolution expressing no-confidence on the 1st respondent-petitioner in the writ petition, under Rule 43A of the Rules. Ext. P2 is also styled as a resolution electing the appellant herein as the President of the Society. This is under Rule 43. But since Ext. P2 relates to election of the President of the Board of Management of the Society, certainly the same could only be challenged under Section 69(1) of the Act, in view of the said provision read with sub-section 2(c) thereof. However, the complaint raised in Ext. P3, which has been directed to be disposed of under Rule 176 as per the impugned judgment relates only to Ext. P1, i.e. the resolution expressing no-confidence on the 1st respondent-petitioner, which stands on a different footing since it does not relate to an election to the Board of Management. In fact, Ext. P2 is a consequence of Ext. P1 and if Ext. P1 is set aside by resort to the proper remedy, Ext. P2 would automatically become without any validity. Therefore, Section 69(2)(c) clearly is not attracted in the case of Ext. P1.

5. Let us also see whether the same would come under any other provisions under Section 6, which reads thus:

"69. Disputes to be decided by Co-operative Arbitration Court and Registrar:- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) among members, past members and persons claiming through members,m past members and deceased members; or

(b) between a member,past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) between the society and a creditor of the society; such dispute shall be referred to the Co-operative Arbitration Court constituted under Sec. 70A, in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes namely:-

> (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;
>
> (b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;
>
> (c) any dispute arising in connection with the election of the Board of Management or any officer of the society.
>
> Explanation:- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;
>
> (d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Sec. 80, including their promotion and inter se seniority.
>
> (3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election."

From a reading of this Section, we could not see that a resolution adopting a no-confidence motion would come under any of the disputes narrated in Section 69. As such, we are unable to agree with the contention that an election dispute would be maintainable under Section 69 of the Act against Ext.P1.

6. Ironically, both sides rely on the same decision of a learned Single Judge of this Court in Kurien v. Joint Registrar, reported in 1982 (2) KLT 357 in support of their contention. More specifically, both sides rely on paragraph 5 of the decision, which reads thus:

> "5. From what is indicated in Rule 43 of the Rules, it is apparent that the election of an office bearer of the society is not by a resolution passed by the committee. A resolution has to be placed before the committee, moved by

> one member and seconded by another member. If it is opposed the same has to be discussed and vote taken. If the resolution is passed that should form part of the minutes as a resolution approved by the committee. The case of election stands on an entirely different footing. The nomination paper has to be submitted by the candidates. The Presiding Officer has to scrutinise and determine the validity of the nomination paper. If there is only one nomination, the candidate concerned must be declared elected. If there is a contest, polling has to take place, votes counted and results declared. The entire proceedings have to be recorded in the minutes book. Proceedings are not to be recorded in the minutes book in the form of resolution. Proceedings should reflect the procedure adopted and the steps taken in the course of the election. That cannot be treated as a resolution passed by the committee. In these circumstances, I am satisfied that the proceedings of the meeting of the committee where an office bearer is elected is not a resolution, which is capable of being rescinded by the Registrar under Rule 176 of the Rules. The purported rescinding of the resolution is an act beyond the jurisdiction of the first respondent."

While affirming that the said decision lays down the correct law, we must note that, clearly that decision related to election of the President of a Society and the learned Single Judge held that the election cannot be set aside by the Registrar by purporting to rescind a resolution under Rule 176 of the Rules. While doing so, the learned Single Judge observed that the process of election under Rule 43 cannot be regarded as adoption of a resolution which is capable of being rescinded by the Registrar.

7. The learned counsel for the 1st respondent would submit that a reading of paragraph 5 of Kurien's decision (supra) would actually suggest that if a decision of the committee is by resolution, certainly it can be subject matter of proceedings under Rule 176. The decision also narrates what constitutes a resolution. In order to ascertain whether Ext. P1 is such a resolution, we have to look at Rule 43A which reads thus:

> "**43 A. Removal of President, Vice-President**

etc. by no-confidence motion:- A committee shall remove the President or the Vice-President or the Treasurer or any other officer of the committee from his office by a no-confidence motion in the following manner, namely:-

(i) A notice of intention to move a no-confidence motion signed by such number of member as shall constitute not less than one third of the total strength of the committee, together with a copy of the motion which is proposed to be removed shall be delivered to the Registrar, in person, by an two members signing the notice.

(ii) Any officer duly authorised by the Registrar concerned in this behalf, shall arrange for the consideration of the motion in a meeting of the committee to be held at the office of the society on a date appointed by him, which shall not be later than thirty days from the date on which the copy of the motion referred to in clause (i) was delivered to the Registrar. The said officer shall give to the members not less than fifteen clear days of notice of such meeting and of the time appointed therefore.

(iii) The officer authorised under clause (ii) shall preside over the meeting convened under this rule.

(iv) A meeting convened for the purpose of considering a motion under this rule shall not for any reason,be adjourned.

(v) No meeting under this rule shall be held, if at the time appointed under the foregoing provisions or, within half an hour from such time, such number of members as shall constitute one half of the total strength of the committee are not present.

(vi) As soon as the meeting convened has commenced, the officer presiding at the meeting shall read to it the motion for the consideration of which it has been convened and declare the motion to be open for debate.

(vii) No debate of any motion under this rule shall be adjourned.

(viii) The officer presiding over the meeting shall neither speak on the merits of the motion nor be entitled to vote thereon but shall regulate the proceedings of the

meeting.

(ix) A copy of the minutes of the meeting showing the result of the voting, together with a copy of the motion shall, on termination of the meeting,be forwarded to the Registrar forthwith by the presiding officer of the meeting.

(x) If the motion is carried with the support of the majority of the members of the committee and if the President or the Vice-President or the Treasurer or any Officer of the committee, as the case may be, does not resign his office within two days after passing of the motion he shall cease to hold the office of the committee of the society forthwith.

(xi) If no meeting could be held for want of quorum as required under clause (v), or if the motion is not carried by such a majority as required under clause (x),no notice of any subsequent motion expressing want of confidence on the same President, Vice-President, the Treasurer or any officer of the committee, shall be allowed within a period of six months from the date of the meeting.

(xii) No notice of motion under this rule shall be allowed within six months from the date of assumption of office by the President or the Vice-President or the Treasurer or any officer of the committee."

Instead of moving of the resolution by a member and another member seconding the same, a notice of intention to move a no-confidence motion signed by not less than one-third of the total strength of the Committee together with a copy of the motion has to be delivered to the Registrar. The Registrar has to authorise an officer for consideration of the motion in a meeting convened in accordance with the procedure prescribed. That motion is open for debate. After debate, a voting has to take place. A copy of the minutes of the meeting showing the result of the meeting with a copy of the motion has to be forwarded to the Registrar. If the motion is carried, the office bearer has to resign within two days or else he shall cease to hold the office of the committee.

8. Going by the above procedure, a motion carried under Rule

43A has all the trappings of a resolution as noted in the above said decision. This procedure is totally different from the procedure prescribed in Rule 43, which deals with election to the office bearers, where there is no resolution at all. Therefore, we are convinced that Ext. P1 is a resolution which could be properly be rescinded by the Registrar under Rule 176 if the same has been passed without complying with the procedure prescribed under Rule 43A since Rule 176 makes it competent for the Registrar to rescind any resolution of any meeting of any Society or Committee of any Society if it appears to him that such resolution is ultra vires the objects of the Society, or is against the provisions of the Act, Rules, Bye-laws of the Society. That is exactly the complaint of the 1st respondent herein in Ext. P3.

9. Although counsel has cited the decision of another learned Single Judge in Prakasini v. Joint Registrar, [2006(1) KLT 199], we are of the opinion that the same is not applicable to the present case, since the same dealt with a dispute regarding inter-se seniority between two employees, which the learned Single Judge held is covered by Section 69 and therefore Rule 176 cannot be invoked.

10. The appellant also tried to persuade us to hold that in view of the amendment to Section 69 with effect from 2-1-2003 under Rule 176, the jurisdiction of the Registrar is limited to monetary issues and in respect of non-monetary disputes, the arbitration court alone has jurisdiction. From a reading of the two provisions, we could not see any such dichotomy of jurisdiction as propounded by the appellant. In fact, under Section 69(1)((h), disputes between a Society and its creditor comes within the jurisdiction of Arbitration Court, which dispute can be nothing but monetary, which would conclusively negative the contention of the appellant.

11. Counsel for the appellant would also submit that since by

Ext. P2, fresh election has been held, which can be challenged only in an election dispute, what the 1st respondent has to do now is to challenge Ext. P2 and Ext. P1 loses relevance. We are of opinion that it is the other way round. Ext. P2 came into being only because by Ext.P1, a no-confidence motion on the 1st respondent was passed. If the 1st respondent succeeds in getting Ext. P1 rescinded, Ext. P2 loses its relevance and validity and the 1st respondent would be deemed to continue as President despite Ext. P2. Therefore, we are unable to countenance this argument of the appellant also.

11. As such, we do not find any infirmity in the judgment of the learned Single Judge in directing the Joint Registrar who has been delegated the powers of the Registrar under Rule 176, to take a decision on Ext. P3 within a time limit. Accordingly, we do not find any merit in the writ appeal and the same is dismissed.

Since this Court had stayed the operation of the judgment and the period prescribed by the learned Single Judge is already over, we direct that the 3rd respondent shall pass orders on Ext. P3 after hearing all concerned within one month from the date of receipt of a copy of this judgment. We hasten to add that we have not considered the merits of the contentions in Ext. P3 and it is for the Joint registrar to decide the matter independently in accordance with law.

Sd/- V.K. Bali, Chief Justice.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.